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September 7, 2004

Honorable George N. Dorn, Jr.  
Interim Executive Director  
South Carolina Public Service Commission  
P.O. Drawer 11649  
Columbia, SC 29211

Re: Duke Power Company  
Docket No. 2004-250-E

Dear Mr. Dorn:

On August 25, 2004, Duke Power applied for authorization under S.C. Code Ann. Sections 58-27-860 and 58-27-870 (Supp. 2003) to implement an Experimental Load Retention Rate Schedule for certain industrial customers. The Application is on the Commission's agenda for the week of September 6, 2004 under Docket No. 2004-250-E.

In the interest of representing all classes of customers, the Consumer Advocate respectfully asks that the Commission initiate an investigation into the impact of Duke's proposal and of the Company's earnings. While the goal of preserving manufacturing jobs in South Carolina is clearly a worthy one, and one which the Consumer Advocate supports, it is unclear from the Application what impact the proposed rate schedule change would have on various manufacturing facilities. Indeed, large companies that are not struggling may benefit as much, or more, than the textile industry. In short, the Commission should have a clearer picture of where the savings are going and who it will benefit. In the interim, the Consumer Advocate asks that the Commission order the continuation of Rider RR until the investigation of the Company's earnings is complete.

The proposed rider in the Application would replace the current Interim Rate Reduction Rider (Rider RR) which is due to expire on September 30, 2004. Rider RR, implemented by the Commission last year because of Duke's over-earnings, decreased rates for all Duke's customers by

approximately \$36 million or 2.0% to 3.7%, depending on customer class. The proposed rider benefits only certain industrial customers. Therefore, rates of commercial, small business and residential customers will go up from what they have been for the past year. Even Duke's industrial customers will pay more than last year - the proposed rider would reduce their rates by 2.8% (as opposed to 3.7%).

The current rider, which is to expire on September 30, 2004, was implemented because of Duke's consistent earnings above its approved rate of return of 12.25%. According to a recent North Carolina filing by Carolina Utility Customers Association (CUCA), these are Duke's recent returns on equity:

<b><u>Period (12 Months Ending)</u></b>	<b><u>Return on Equity</u></b>
December 2002	13.23%
March 2003	14.48%
June 2003	14.43%
September 2003	13.53%
December 2003	13.90% (year-end), 13.15% (simple avg.)

See, Petition to Intervene and Protest of Carolina Utility Customers Association, Inc. In *Application of Duke Power for Authorization Under North Carolina General Statute Section 62-133.6(e)(2) to Share the Net Revenues from Certain of Its Wholesale Sales*, NCUC Docket No. E-7, Sub 751, dated May 28, 2004.

The Commission should also be aware of the fact that Duke's South Carolina quarterly financial report for the twelve months ending March 31, 2004, filed with this Commission on June 29, 2004, does not include profits associated with Duke's bulk power marketing off-system sales (BPM profits) in the South Carolina jurisdictional rate of return calculation, even though the power is generated by facilities financed by ratepayers. This was the issue in the above referenced North Carolina proceeding, which should also be considered in an investigation of the Company's earnings.

In its application, Duke asserts that the proposed rider is an experimental rate, involves no increase in rates and does not require a determination of the entire rate structure and overall rate of return; therefore, Duke asks the Commission to permit the requested rate schedule without notice and hearing. However, without the Application, it is clear that a determination of the Company's entire rate structure would be required. With the expiration of Rider RR on September 30, rates for all classes of Duke customers are going to rise. Duke's proposal seeks to continue addressing its over-earnings by directing reductions to one group of customers only, and to deny other commercial, small business, and residential customers the opportunity to be heard. The fact that a company chooses to call a rate change "experimental", should not prevent the Commission from exercising its regulatory powers.

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The Consumer Advocate appreciates Duke's efforts to contribute some of its profits to social programs (as in the June 29<sup>th</sup> filing) and to assist struggling manufacturing customers. This should not, however, prevent the Commission from examining the Company's actual earnings, and depending on the results of such examination, taking appropriate action. A complete earnings investigation may reveal the need to reduce rates for those manufacturing customers even further.

Sincerely,

Elliott F. Elam, Jr.  
Acting Consumer Advocate

cc: Richard L. Whitt, Esquire  
F. David Butler, Esquire